

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-216861

**DATE:** June 25, 1985

**MATTER OF:** Malloy Construction Company -  
Davis-Bacon Act Debarment -  
Stipulation Agreement

**DIGEST:**

The Department of Labor (DOL) recommended debarment of a contractor for violations of the Davis-Bacon Act constituting a disregard of its obligations to employees under the Act, and both parties reached an agreement in an administrative law proceeding stipulating to the contractor's debarment. Accordingly, where the contractor specifically stipulates to debarment, after being granted due process by DOL in the form of an administrative law proceeding, we will accept DOL's findings as evidence of a violation of the Davis-Bacon Act. Therefore, the contractor is hereby debarred under the Act.

The Deputy Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated April 23, 1984, recommended that the names Malloy Construction Company (Malloy); Patrick Malloy, individually and as its President; and Donald Malloy, individually and as its Secretary-Treasurer; be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), which constituted a disregard of obligations to employees under the Act. We concur in DOL's recommendation.

Malloy entered into eight contracts (F28609-79-C-0043, F28609-79-C-0040, F28609-80-C-0023, F28609-80-C-0029, F28609-80-C-0036, DACA 51-80-C-0040, DABT 35-80-C-0191, and DABT 35-81-C-0005) variously with the Departments of the Army and Air Force for construction work. These contracts were subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1984), the contractor was to submit payroll records certified as to correctness and completeness.

The DOL found, as a result of an investigation, that employees performing work for Malloy under these contracts

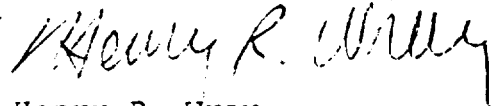
were not paid the minimum wages required pursuant to the Davis-Bacon Act. Further, DOL found that the number of hours and the rates reported on the certified payrolls were inaccurate. Malloy was notified by certified letter of the nature and extent of the Davis-Bacon Act violations with which it was charged, and that debarment was possible. Malloy was also given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. §§ 5.6(c)(1) and 5.11(b) (1981). Such a hearing was requested. However, on June 22, 1983, an agreement was reached between DOL and Malloy, and approved by the administrative law judge (Malloy Construction Company, Case No. 82-DB-28, Office of Administrative Law Judges, United States Department of Labor (June 22, 1983) (Riffey, A.L.J.)), providing for payment to the workers of withheld funds and debarment of Malloy under the Davis-Bacon Act.

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In this regard we make independent legal determinations based upon our own evaluation of the evidence in each case. B-3368, March 19, 1957. However, in the agreement dated June 22, 1983, Malloy specifically stipulated that DOL's allegations of violations of the Act may be deemed admitted for purposes of payment of the workers and debarment. Accordingly, where the contractor specifically stipulates to debarment, after being granted due process by DOL in the form of an administrative law proceeding, we will accept DOL's findings as evidence of a violation of the Davis-Bacon Act.

Therefore, we find that Malloy Construction Company; Patrick Malloy, individually and as its President; and Donald Malloy, individually and as its Secretary-Treasurer; have disregarded their obligations to employees under the Davis-Bacon Act. The names Malloy Construction Company; Patrick Malloy, individually and as its President; and Donald Malloy, individually and as its Secretary-Treasurer; will be included on a list to be distributed to all departments of the Government, and pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any firm, corporation, partnership, or association in

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which they, or any of them, have an interest until 3 years have elapsed from the date of publication of such list.

A handwritten signature in dark ink, appearing to read "Henry R. Wray". The signature is fluid and cursive, with the first name "Henry" and last name "Wray" clearly distinguishable.

Henry R. Wray  
Associate General Counsel